



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 23232155

Date: DEC. 16, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner, a software, services, and internet technologies company, seeks to employ the Beneficiary as a “software development engineer in test II.” It requests classification of the Beneficiary as a professional under the third preference immigrant classification. Immigration and Nationality Act (the Act), section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent residence.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary is qualified for the offered position because he does not meet the experience requirements stated on the labor certification. The Director granted the Petitioner’s subsequent motion to reopen and issued a new decision affirming the denial of the petition. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL).¹ See section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. See section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). See section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition,

¹ The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is December 8, 2011. See 8 C.F.R. § 204.5(d).

the foreign national applies for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

Section 203(b)(3)(A)(ii) of the Act grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. *See also* 8 C.F.R. § 204.5(l)(2).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in pertinent part that a petition for a professional must be accompanied by evidence that the beneficiary holds a United States baccalaureate degree or foreign equivalent degree and by evidence that the beneficiary is a member of the professions. Evidence of a baccalaureate degree must be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. *Id.*

A beneficiary must also have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg'l Comm'r 1977).

II. ANALYSIS

The sole issue before us on appeal is whether the Petitioner established that the Beneficiary met all education and experience requirements specified on the labor certification when it was filed in December 2011.

A. Education and Experience Requirements

The labor certification indicates that the offered position requires a U.S. master's degree, or foreign equivalent degree, in computer science, engineering, mathematics, information systems, physics or related field and 36 months of experience in the offered job or "any computer related job title." The Petitioner indicated that a candidate could alternatively qualify for the offered position with a U.S. bachelor's degree, or foreign equivalent degree, in one of the listed fields, and five years of progressive post-baccalaureate experience.

The record indicates that the Beneficiary attended [REDACTED] University in India, where he completed a three-year bachelor of science degree in electronics and a two-year master of science degree in computer science. The record establishes that the Beneficiary's master's degree is equivalent to a U.S. bachelor's degree in a field of study identified as acceptable on the labor certification. The Petitioner documented that the Beneficiary gained five years of progressive experience with three different employers between February 17, 2003 and March 28, 2008.²

In denying the petition, the Director determined that the record did not demonstrate the Beneficiary has the five years of progressive post-baccalaureate experience required by the terms of the labor certification. Citing *Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017), the

² The labor certification indicates that Beneficiary started working for the Petitioner in the offered position of "software development engineering in Test II" on March 31, 2008. Because the labor certification indicates that the Beneficiary's experience with the petitioning employer was gained in the offered position, the Director did not consider his most recent employment in analyzing whether he possesses the required post-baccalaureate experience. *See* 20 C.F.R. § 656.17(i)(3)(i), (5)(ii).

Director determined that the Beneficiary received his foreign equivalent degree when his university issued him a provisional degree certificate on May 9, 2003, and that only experience gained after that date could count towards his post-baccalaureate experience. The Director calculated his experience from May 9, 2003, and concluded that he had only four years, ten months, and nine days of qualifying experience as of the priority date.

B. The Beneficiary's Degree and Post-Baccalaureate Experience

The specific issue we must address is *when* the Beneficiary received his master's degree from [redacted] University.

On appeal, the Petitioner asserts that the Director applied an overly restrictive interpretation of *Matter of O-A-* and objects to the Director's statement that "there is no provision allowing for a date earlier than the date of the provisional certificate for purposes of calculating post-baccalaureate experience." It further contends that *Matter of O-A-* requires a case-specific analysis of all relevant evidence to determine when a particular individual completed all the substantive requirements for their degree, and that the Director failed to conduct the required analysis here. The Petitioner maintains that, applying this standard, "it is more likely than not that the Beneficiary earned his Indian degree in November 2002, rendering all of his 2003 to 2008 experience 'post-baccalaureate.'"

For the reasons discussed below, the Petitioner has not established that the Beneficiary received his master's degree on a date prior to the issuance of his provisional certificate.

The statute and regulations governing this classification refer to a "degree," not a diploma. The "initial evidence" requirement for professionals under 8 C.F.R. § 204.5(l)(3)(ii)(C) states that "[e]vidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." We have previously determined that an "official academic record" is not limited to a formal diploma.³

Accordingly, we must conduct a case-specific analysis to determine when the Beneficiary completed all substantive requirements to earn the degree and when the university approved the degree as demonstrated by an official academic record. When determining whether a document is an official academic record that substantiates a claimed degree, we may consider whether the document was issued by a university in the normal course of its business; whether the document was issued contemporaneous with events; and whether the document indicates that all degree requirements, not just the required coursework, have been completed.⁴

The record contains the following evidence related to the Beneficiary's master's degree from [redacted] [redacted] University:

- Diploma issued on October 19, 2004, stating the Beneficiary was admitted to the Degree of Master of Science after "having been certified by duly appointed Examiners to be qualified to

³ See *Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017).

⁴ *Id.* at 4.

receive the same and having been placed in the First Class with Distinction in Computer Science at the examination held in November 2022.”

- Provisional Certificate issued on May 9, 2003, stating that the Beneficiary passed the M.Sc. degree examination in First Class with Distinction in Computer Science in November 2002.
- Memoranda of marks indicating the Beneficiary’s grades on examinations for all four semesters of his enrollment. The memorandum of marks for the November 2002 examination was issued on May 2, 2003.
- A July 2021 letter from the head of the university’s computer science department, who certifies that the Beneficiary “completed all substantive requirements for the degree of master of science when he passed the M.Sc. Degree Examination . . . in November 2002.”
- Academic Equivalence Evaluation indicating that the Beneficiary was awarded a diploma for his master of science degree in November 2002 “[f]ollowing his completion of the required academic coursework and examinations.”

The Director, relying on *Matter of O-A-*, determined that the Beneficiary’s master’s degree was awarded in May 2003, when the university issued the provisional certificate, rather than in October 2004, when the diploma was issued. The Petitioner maintains that the record demonstrates that the Beneficiary completed all substantive degree requirements in November 2002, approximately seven months prior to the issuance of his provisional certificate.

A provisional certificate will constitute the official academic record of a beneficiary’s “degree” for purposes of calculating the five-year period of post-graduate experience, if a petitioner establishes that all the substantive requirements for the degree were met and that the degree was in fact approved by the responsible university body at the time a provisional certificate was issued. *Matter of O-A-, Inc.*, Adopted Decision 2017-03, at 4.⁵ When a petitioner submits a provisional certificate as evidence of a beneficiary’s receipt of a degree, we consider evidence presented regarding the individual nature of each university’s or college’s requirements for each program of study and each student’s completion of those requirements. A petitioner bears the burden to establish that a beneficiary’s provisional certificate reflects that, at the time the certificate was issued, all the substantive requirements for the degree were met and the degree was in fact approved by the responsible college or university body. *Id.*

Here, although accepted by the Director as evidence of his degree completion in May 2003, the Beneficiary’s provisional certificate only states that he passed his master of science degree examination in November 2002. It does not indicate that he met all substantive requirements for his degree on that earlier date or specify when the degree was approved by the university. Further, the record does not contain sufficient evidence corroborating the substantive requirements of the Beneficiary’s specific program of study. Without such evidence, the record does not support the Petitioner’s claims that he completed all substantive requirements, and that the university approved

⁵ The provisional degree certificate in *Matter of O-A-, Inc.* was determined to be consistent with that described by The American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE), which states that a provisional degree certificate issued by an Indian university can provide “evidence of completion of all requirements for the degree in question . . . and is comparable to an official U.S. academic transcript with a degree statement certifying completion of all requirements for the degree . . .” See *India: Provisional Degree Certificate*, AACRAO, <https://www.aacrao.org/edge/country/credentials/credential/india/provisional-degree-certificate>.

the issuance of his master of science degree, on a date earlier than the issuance of the provisional certificate.

The Petitioner emphasizes that the earlier November 2002 date appears on his diploma, in the provisional certificate, on his final memorandum of marks, in the academic equivalency evaluation, and in the letter from the head of the computer science department at [redacted] University. He asserts that the Director failed to address this case-specific evidence as required by *Matter of O-A-* and maintains that he established by a preponderance of the evidence that his degree was approved by the university and awarded in November 2002.

Although a university-issued statement of marks is an official academic record, the Beneficiary's marks statements alone do not demonstrate his completion of all degree requirements in November 2002. The Beneficiary's marks statements simply confirm when he took his examinations in each semester and indicate he took his fourth semester examinations in November 2002; the Petitioner did not submit a consolidated statement of marks with additional relevant information, such as the date the university approved the degree. In addition, the memorandum of marks for the Beneficiary's final semester's examinations, like the provisional certificate, was issued in May 2003 and does not support a determination that the university approved his completion of all degree requirements in November 2002. The Petitioner has not provided an explanation for the seven-month delay between the date of the fourth semester examination and the date of issuance of the provisional certificate and final memorandum of marks.

We have also considered the July 2021 letter from the head of [redacted] University's computer science department. She certifies that the Beneficiary "completed all substantive requirements for the degree of master of science when he passed the M.Sc. Degree Examination . . . in November 2002" and that "this M.Sc. Degree Examination constitutes approval by [the university] that he had earned his degree as of November 2002." This letter is not an official academic record substantiating that the degree was awarded prior to the date on the provisional certificate. The letter, written nearly 19 years after the Beneficiary's purported completion of the degree, was issued in response to the Beneficiary's inquiries, not in the university's normal course of business. Although the letter implies that the final substantive requirement for the degree was passing the November 2002 examination, the record otherwise lacks any evidence documenting the substantive requirements for the university's master of science in computer science degree at the time of the Beneficiary's enrollment. Even if the record established that passing that examination was the final substantive requirement leading to issuance of the master of science degree, the record does not establish that the university acknowledged the Beneficiary's passing marks prior to May 2003 or otherwise approved his completion of the degree requirements prior to that date.

As additional proof that the Beneficiary's degree preceded the issuance of the provisional certificate, the Petitioner cites the submitted evaluation of his educational credentials. The evaluation, prepared in 2011, states that the Beneficiary's master's degree was awarded in November 2002 "following his completion of the required academic coursework and examinations." However, the record does not support this statement and the evaluator does not explain how they reached this conclusion. As discussed above, the evidence indicates the Beneficiary passed his final semester examinations in November 2002, but it does not demonstrate that the degree was approved as completed and awarded by the university at that time, or at any time prior to the issuance of the provisional certificate in May 2003.

Again, the Petitioner has not explained the seven-month delay between the November 2002 examinations and the May 2003 provisional certificate, and the record does not contain contemporaneous evidence indicating that the university approved the Beneficiary's completion of the degree in 2002.

Based on a case-specific analysis of the educational documentation submitted in support of the petition, we conclude that the evidence does not support the Petitioner's claim that the Beneficiary was awarded his master of science degree in November 2002 or any date prior to the issuance of his provisional certificate in May 2003. The Petitioner has not demonstrated the Beneficiary's possession, by the petition's priority date, of the requisite five years of post-baccalaureate experience required for the offered position. Therefore, we will dismiss the appeal.

C. The Beneficiary's Experience Gained with the Petitioner

On appeal, the Petitioner asserts for the first time that even if the Beneficiary's experience can only be counted from May 9, 2003, the date of his provisional certificate, he nevertheless acquired five years of post-baccalaureate experience prior to the December 8, 2011 priority date. Specifically, the Petitioner asserts that it initially hired him for the position of "software development engineer in test" and that this position was not "substantially comparable" to the offered position. The Petitioner provides the Beneficiary's personnel records and letters from his former supervisors in support of these claims.

We observe that the Petitioner indicated at section K of the labor certification that the Beneficiary had been working in the offered position of "software development engineer in test II," performing identical duties, from the time it hired him in March 2008 through the time of filing in December 2011. The regulation at 20 C.F.R. § 656.17(i)(3)(i) states that an employer cannot require domestic worker applicants to possess training and/or experience beyond what the beneficiary possessed at the time of hire unless the beneficiary gained the experience while working for the employer in a position not substantially comparable to the position for which certification is being sought." A "substantially comparable" job or position means a job or position requiring performance of the same job duties more than 50 percent of the time. 8 C.F.R. § 656.17(i)(5)(ii). If the Beneficiary was not in fact employed in a "substantially comparable" job when the Petitioner hired him in March 2008, the Petitioner should have provided this information, including his job duties and his dates of employment in the claimed previous job, when it completed the labor certification. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

When conducting appellate review, we determine whether an unfavorable decision contains an erroneous conclusion of law, application of policy, finding of fact, or exercise of discretion. The Petitioner's request that we consider new claims and evidence intended to re-characterize the Beneficiary's employment history as stated on the labor certification is not properly before us on appeal. The Petitioner did not make these claims in response to the Director's request for evidence or in support of its previously filed motion to reopen and reconsider. Nor does it claim that the Director erred by not considering the Beneficiary's experience gained with the petitioning company based on the evidence previously submitted. Accordingly, we need not further address the new claims and evidence relating to the Beneficiary's employment history with the Petitioner.

III. CONCLUSION

For the reasons discussed, the record does not establish that the Beneficiary satisfied all requirements stated on the labor certification as of the priority date. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.